

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Mohamed Alfash,

Case No. 22-cv-2659 (KMM/DTS)

Plaintiff,

v.

ORDER

United States Department of Homeland
Security, Alejandro N. Mayorkas, *United
States Secretary of the Department of Homeland
Security, in his official capacity,*

Defendants.

Plaintiff Mohamed Alfash brought this employment discrimination action on his own behalf without a lawyer (also referred to as proceeding *pro se*) against the United States Department of Homeland Security (“DHS”) and its Secretary, Alejandro N. Mayorkas, alleging that his employer, the United States Citizenship and Immigration Services, harassed, discriminated, and retaliated against him and failed to accommodate his disabilities. [*See* Compl., Dkt. No. 1.] DHS moved for the Court to dismiss the agency as a defendant, contending that the agency head is the only proper defendant. Mr. Alfash has not opposed the motion or otherwise responded to it.

The Court agrees that DHS should be dismissed as a defendant. Mr. Alfash sued the defendants under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, the Age Discrimination in Employment Act, 29 U.S.C. § 621, and the Rehabilitation Act, 29 U.S.C. § 710. Title VII and the Rehabilitation Act expressly provide that in an action brought by a federal employee, “the head of the department, agency, or unit, as appropriate, shall be the

defendant.” *See* 42 U.S.C. § 2000e-16(c); 29 U.S.C. § 794a(a)(1) (adopting Title VII procedures for the Rehabilitation Act). And because the ADEA is generally construed in accordance with Title VII, the proper defendant in an ADEA action brought by a federal employee is also the agency head. *See Oscar Mayer & Co v. Evans*, 441 U.S. 750, 756 (1979) (finding parallel provisions of the ADEA and Title VII should be construed consistently); *Ellis v. U.S. Postal Serv.*, 784 F.2d 835, 838 (7th Cir. 1986) (holding that the agency head is the only proper defendant for an ADEA claim brought against a federal employer); *Murillo v. Kittelson*, No. 8:19CV571, 2020 WL 3250231, at *4 (D. Neb. June 16, 2020) (collecting cases).

Based on the discussion above, only Secretary Mayorkas is a proper defendant in this case, Defendant’s motion to dismiss [Dkt. No. 11] is granted, and the claims against the United States Department of Homeland Security are hereby **DISMISSED** with prejudice.

Date: May 22, 2023

s/ Katherine Menendez
 Katherine Menendez
 United States District Judge